

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

05 10737 NMG

MILFORD REGIONAL MEDICAL
CENTER f/k/a MILFORD-
WHITINSVILLE REGIONAL
HOSPITAL,

Plaintiff,

v.

JOSE A. CRUZ and JOHN DOE,
Defendants.

MAGISTRATE JUDGE hbc

CIV. No. _____

RECEIPT # 3507
AMOUNT \$ 40
SUMMONS ISSUED 40
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. 10M
DATE 4-13-05

COMPLAINT

Statement of the Case

1. Plaintiff, Milford Regional Medical Center ("MRMC"), brings this action for conversion against Defendants Jose A. Cruz and John Doe. Without MRMC's knowledge or permission, Defendant Jose A. Cruz, a former employee of MRMC, stole thousands of dollars worth of diagnostic instruments and medical supplies from MRMC's facilities and arranged sales of those instruments and supplies to third parties. Cruz apparently arranged some of these sales through John Doe, an eBay seller who employs the username "ri.st.05." Cruz and Doe's theft occurred without MRMC's permission and has caused, and may continue to cause, injury and damages to MRMC.

Parties and Jurisdiction

2. The plaintiff, Milford Regional Medical Center f/k/a Milford-Whitinsville Regional Hospital ("MRMC") is the hospital division of Milford Regional Healthcare System, Inc., a non-profit corporation existing under the laws of Massachusetts. MRMC's principal place of business is at 14 Prospect Street, Milford, Massachusetts 01757.

3. Defendant Jose A. Cruz ("Cruz") is an individual and, upon information and belief, is a resident of Cranston, Rhode Island.

4. Defendant John Doe ("Doe") is an individual acting on the world wide web site <http://www.ebay.com> ("eBay") under the eBay User ID "ri.st.05."

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1) (diversity of citizenship).

6. This Court has personal jurisdiction over Defendant Jose Cruz pursuant to Mass. Gen. Laws c. 223A, § 3 because, *inter alia*, Cruz (1) transacted business in the Commonwealth of Massachusetts and (2) caused tortuous injury by his acts in the Commonwealth of Massachusetts.

7. This Court has personal jurisdiction over Defendant John Doe pursuant to Mass. Gen. Laws c. 223A, § 3 because, *inter alia*, Doe (1) caused tortuous injury by his acts in the Commonwealth of Massachusetts and/or (2) caused tortuous injury in the Commonwealth of Massachusetts by his acts outside of the Commonwealth and regularly solicits business within the Commonwealth.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) because, *inter alia*, a substantial part of the events giving rise to this complaint occurred in the District of Massachusetts.

Factual Background

9. MRMC is a full-service, community and regional teaching hospital. It provides a wide array of healthcare services to the surrounding community, including inpatient and outpatient surgical services.

10. In order to provide surgical services to its patients, MRMC procures and maintains a wide variety of medical equipment and supplies, including diagnostic instruments.

11. Among MRMC's medical equipment are endoscopes and endoscopic digital camera heads for use in its inpatient and outpatient surgical facilities.

12. On or about March 16, 2005, an outside salesperson contacted an MRMC staff member and advised the staff member that the salesperson had found an individual selling endoscopic digital camera heads on the world wide web auction site, eBay. The salesperson advised the MRMC staff member that the online seller claimed to be located in Cranston, Rhode Island. The salesperson suggested that MRMC audit its inventory of endoscopic diagnostic instruments to determine whether or not any were missing.

13. On or about March 16, 2005, MRMC staff members audited MRMC's inventory of endoscopic diagnostic instruments and discovered that three of MRMC's endoscopic digital camera heads and autoclavable digital camera trays were missing.

14. Following this discovery, MRMC staff members searched eBay's auction website and located the online seller that the salesperson had described. MRMC staff members determined that the online seller was at that time offering for sale, through eBay, numerous medical supplies and pieces of medical equipment. This equipment included, among other items, arthroscopes and laparoscopic sets. MRMC staff members also determined that the same online seller had recently offered for sale, through eBay, additional medical supplies and equipment, including endoscopes and endoscopic digital camera heads.

15. The seller described in the preceding paragraphs identified him/herself only by the eBay User ID "ri.st.05." On information and belief, the seller described in the preceding paragraphs was Doe.

16. On or about March 18, 2005, MRMC staff members reported the theft of MRMC's diagnostic devices to the Milford Police Department.

17. MRMC staff members subsequently audited MRMC's entire inventory of surgical equipment and supplies and discovered that additional medical equipment and supplies were missing. MRMC has determined that the cost to replace MRMC's missing equipment and supplies will be eighty-four thousand, six hundred seventy-five dollars and thirty-seven cents (\$84,675.37).

18. Cruz is a former employee of MRMC. During Cruz's employment, he worked in MRMC's surgical facilities. MRMC terminated Cruz's employment on or about March 28, 2005.

19. On or about March 25, 2005, the Milford Police Department arrested Cruz and charged him with larceny of three endoscopic digital camera heads from MRMC.

20. Upon information and belief, following Cruz's arrest, police officers searched Cruz's home and recovered an endoscope and an endoscopic digital camera head, both of which were the property of MRMC.

21. MRMC never gave Cruz permission to take or sell any of MRMC's diagnostic equipment. Prior to March 16, 2005, MRMC had no knowledge that Cruz had done so.

22. By removing MRMC's endoscopic digital camera heads and autoclavable digital camera trays, as well as other medical equipment and supplies that are missing from MRMC's surgical facilities, Cruz and Doe caused damage to MRMC in at least the amount of eighty-four thousand, six hundred seventy-five dollars and thirty-seven cents (\$84,675.37).

COUNT I
(Common Law Conversion)

23. Plaintiff restates and realleges the allegations contained in Paragraphs 1 through 22 of the Complaint as if expressly set forth herein.

24. The diagnostic devices and medical supplies described in the preceding paragraphs are personal property, and were, at all times relevant to this complaint, the personal property of MRMC.

25. At all times relevant to this complaint, MRMC possessed and/or had the right to immediately possess its diagnostic devices and medical supplies.

26. Upon information and belief, Cruz stole MRMC's medical equipment and supplies from MRMC's surgical facilities, secreted them at his home, and transferred them to Doe, all without MRMC's knowledge or permission.

27. Upon information and belief, Doe stole MRMC's medical equipment and supplies and sold or attempted to sell them to third parties, without MRMC's knowledge or permission.

28. By stealing MRMC's medical equipment and supplies, Cruz and Doe caused damage to MRMC in at least the amount of eighty-four thousand, six hundred seventy-five dollars and thirty-seven cents (\$84,675.37).


WHEREFORE, MRMC respectfully requests that this Court:

1. Enter judgment against Cruz and Doe on Count I and award damages to MRMC;
2. Award MRMC its costs and expenses, including attorney's fees; and
3. Award such other and further relief as justice requires

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

MILFORD REGIONAL MEDICAL CENTER
By its attorneys,



Daniel A. Curto (BBO #639883)
Heather Egan Sussman (BBO #648192)
McDermott Will & Emery, LLP
28 State Street
Boston, MA 02109
(617) 535-4000

Dated: April 12, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Milford Regional Medical Center v. Cruz
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 620, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 570, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
n/a
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☒ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Daniel Curto, Esq., Heather Egan Sussman, Esq. / McDermott Will & Emery LLPADDRESS 28 State Street / Boston, Massachusetts 02109TELEPHONE NO. (617) 535-4000

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MILFORD REGIONAL MEDICAL CENTER f/k/a MILFORD-WHITINSVILLE REGIONAL HOSPITAL

(b) County of Residence of First Listed Plaintiff Worcester (MA)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

McDermott Will & Emery LLP, 28 State Street, Boston, Massachusetts
02109 (Daniel Curto, Esq. and Heather Egan Sussman, Esq.)

DEFENDANTS

JOSE A. CRUZ and JOHN DOE

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED:

Attorneys (If Known)

unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(a)

Brief description of cause:
Conversion, based upon Defendants' theft and subsequent sale of Plaintiff's medical equipment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 100,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE n/a

DOCKET NUMBER n/a

DATE

04/12/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE